

**RHOADS & SINON LLP**

ROBERT H. LONG, JR.\*  
SHERILL T. MOYER  
JAN P. PADEN  
RICHARD B. WOOD  
LAWRENCE B. ABRAMS III\*  
J. BRUCE WALTER  
JOHN P. MANBECK  
FRANK J. LEBER  
PAUL A. LUNDEEN  
JACK F. HURLEY, JR.  
DAVID B. DOWLING  
DAVID F. O'LEARY  
DAVID O. TWADDELL  
CHARLES J. FERRY  
STANLEY A. SMITH  
JENS H. DAMGAARD\*  
DRAKE D. NICHOLAS  
THOMAS A. FRENCH  
DEAN H. DUSINBERRE  
DONNA M.J. CLARK  
CHARLES E. GUTSHALL  
PAUL F. WESSELL

SHAWN D. LOCHINGER  
JAMES H. CAWLEY  
DEAN F. PIERMATTEI  
KENNETH L. JOEL  
DEBRA M. KRIETE  
LORI J. MCELROY  
TODD J. SHILL  
THOMAS J. NEHILLA  
KEVIN M. GOLD  
CARL D. LUNDBLAD  
JAMES E. ELLISON  
RICHARD E. ARTELL  
ROBERT J. TRIBECK  
TIMOTHY J. NIEMAN  
PAUL J. BRUDER, JR.  
JOANNE BOOK CHRISTINE  
SUSAN E. SCHWAB  
AMY J. MENDELSON\*  
MICHAEL W. WINFIELD  
KATHRYN G. SOPHY  
STEPHANIE E. DIVITTORE  
KIMBERLY L. SNELL-ZARCONE

\*ALSO ADMITTED TO THE FLORIDA BAR

ATTORNEYS AT LAW  
TWELFTH FLOOR  
ONE SOUTH MARKET SQUARE  
P.O. BOX 1146  
HARRISBURG, PA 17108-1146  
TELEPHONE (717) 233-5731  
FAX (717) 231-6637  
EMAIL czucaro@rhoads-sinon.com

January 23, 2001

OF COUNSEL  
FRANK A. SINON  
HENRY W. RHOADS  
JOHN C. DOWLING  
R. STEPHEN SHIBLA

PAUL H. RHOADS  
1907-1984  
JOHN M. MUSSELMAN  
1919-1980  
CLYDE R. HENDERSHOT  
1922-1980

DIRECT DIAL NO.  
233-6700

FILE NO.

2135/01

Re: **Dean E. Bergstresser v. Robert Shannon, Superintendent,  
District Attorney of Potter County and the Attorney  
General of Pennsylvania (Civil No. 1:00-CV-1713)**

J. Andrew Smyser, Magistrate Judge  
U.S.D.C. Middle District of Pennsylvania  
Federal Building  
Harrisburg, PA 17108

Dear Judge Smyser:

**FILED  
HARRISBURG**

JAN 26 2001

MARY E. D'ANDREA, CLERK  
Per                       
DEPUTY CLERK

I write to respectfully request that you reconsider that portion of your Order of January 9, 2001 which denied my client Dean E. Bergstresser a certificate of appealability.

I hope you will agree that our petition for writ of habeas corpus was not the typical knee-jerk reaction to unsuccessful state court proceedings but presented unique, complex and unresolved issues. I am certainly not in this context attempting to assert your opinion was in error but merely to submit that such matters are particularly ripe for Federal Appellate review.

I would emphasize our assertion in Ground five that the trial counsel was ineffective in not objecting to the vouching testimony of the District Attorney of Potter County. Your opinion (page 31) finds "faulty advocacy" which, however, does not rise to prejudicial status since Bergstresser was not convicted of a higher degree of murder and that if he had a "different finding as to prejudice would seemingly be warranted". But Dean was convicted of aggravated assault which the Pennsylvania Supreme Court in *Commonwealth v. O'Hanlon*, 653 A.2d 616 (1995) characterized as the functional equivalent of a murder in which for some reason death fails to occur. Moreover, Mr. Bergstresser was sentenced to a maximum of 16 years, which is within the sentencing range of a third-degree murder conviction.

Mr. Bergstresser's family has extremely limited financial resources and a certificate of appealability would certainly expedite the Circuit Court's review of the matter.

**RHOADS & SINON LLP**

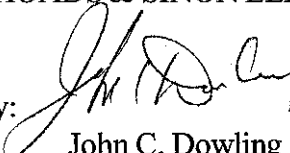
J. Andrew Smyser, Magistrate Judge  
January 23, 2001  
Page 2

Your favorable consideration of this request is most earnestly sought.

Respectfully Yours,

RHOADS & SINON LLP

By:



John C. Dowling

JCD/clz

cc: Jeffrey E. Leber, District Attorney